

Annual Mooring Fees - Tidelands Value Method

by Paul Bahan

This report introduces a third method for establishing the annual mooring fees for Newport Harbor. I believe the three most defensible methods for establishing annual mooring fees are:

1. CPI adjustments in line with historical CPI adjustments,
2. Comparable Approach, with adjustments for cost of maintenance and lack of access, and
3. Value of Use of Tidelands.

In other reports submitted to the Harbor Commission, the CPI and Comparable Approach established that the annual mooring fees should not exceed approximately \$25 per foot. The following is a third defensible method for establishing the annual mooring fees.

Tidelands Value Method

This method starts with the same assumption used in establishing the fees to be charged for other uses of tidelands, namely the value of the use, which was established by appraisal, is approximately 50 cents per square foot for the area taken out of the public's use or navigation.

As I've contemplated the actual uses of the mooring fields from the perspective of use by boaters, I've found myself with two logical analytical approaches. I've called the first the Exclusive Tideland's Use. It assumes an entire row of moorings is out of use by the public for navigation and most recreational purposes. I've called the second the Non-Exclusive Tideland's use. It assumes that there is an area between the individual moorings in a row of moorings where some public use is still made of the tidelands such as kayaking and paddle boarding.

The Exclusive Tideland's Use Method. In this approach, an area is calculated which represents the area of tidelands occupied by a row of moorings, with the idea that this row interferes with other public uses of tidelands and is not very navigable. Winds and tides may shift boats side to side within the row. Therefore this approach assumes the entire row is out of use by the public. (footnote 1) But the public does use some of the area, so a second approach has also been used.

One of the more crowded rows in the J field is approximately 566 feet long with 16 moorings. This can be seen on Google Earth, with measurements taken on Google Earth, as shown in the satellite photos below. If each of the moorings in the row were 40 feet, and allowing 10 feet of forward space and 10 feet of space to the rear of the boats, then each mooring would take up 60 feet in length. However, the average actual average length of boats on a 40-foot mooring is only 37.5 feet, so the effective total length to be used is 57.5 feet ($37.5 + 10 + 10$). (footnote 2).

Exclusive use Calculations: The 566 foot long row, with 16 moorings with an effective length of 57.5 feet, buoy to buoy, interferes with 32,545 sq. ft. of tidelands. Dividing this by the 16 moorings in the row, each mooring interferes with 2,034 sq. ft. of tidelands, assuming exclusive use and no other recreational use between the moorings. At 50 cents per foot, that would be an annual fee of \$1,017 for a 40-foot mooring, which is \$25.43 per foot.

The Non-Exclusive Tidelands Use Method. In this method or approach, an area is calculated which represents the area of tidelands occupied by a row of moorings with the idea that *only part of the row interferes with other public uses* of tidelands and is not completely navigable.

As in the Exclusive use, we will look to one of the more crowded rows in the J field, which is approximately 566 feet long, with 16 moorings. However, we assume that there is a 12-foot wide area between the individual moorings that can be used for *some, but not all*, recreational purpose, such as kayaking, and paddle boarding. It is understood that this area will not accommodate other uses such as sailboat racing or large powerboat navigation at normal speeds, etc. Because of the restricted use, we use only 50% of this 12-foot wide area for our calculation. We use, therefore, 6 feet, instead of 12 feet for this area.

Non-Exclusive Use Calculations: There are 15 such areas (between the 16 boats). $15 \times 6 \text{ feet} = 90 \text{ feet}$ in the row that is available for some recreation. The 566 foot long row, is therefore reduced by 90 feet, for an effective semi-exclusive use of 476 feet by the moorings in the row. Again, assuming a 37.5 foot boat with 10 feet in front and in back of the boat to the mooring buoy, that is 57.5 feet ($57.5 \text{ feet} \times 476 = 27,370 \text{ sq ft}$ of tidelands). Dividing this by the 16 moorings in the row, then each mooring interferes with 1,710 sq ft of tidelands. At 50 cents per foot, this would mean an annual fee of \$855 for a 40-foot mooring, which is an annual fee of \$21.38 per foot.

Conclusion.

Using the Tidelands Value Method, the appropriate annual fee for a mooring is between \$21.38 and \$25.43 per foot, depending on the extent to which the public may still have some use of the area between moorings.

Respectfully Submitted,

Date: April 5, 2015

Paul Bahan

Paul Bahan,
Commodore South Shore Yacht Club

(I've included some personal biographical background in footnote 3)

Footnotes and Photos:

- 1. Piers and Moorings.** This method uses the same valuation as one method used for piers, but applies the valuation to the particular facts and considerations that apply to moorings. However, this approach acknowledges that there are significant differences between moorings and piers and floats. These differences include the fact that boats on moorings move with winds and tides, and the fact that piers are close to the shoreline, and at low tide, piers are in areas that are less navigable. Additionally, there is nearby access from these pier area tidelands to the shore. However the fundamental use is the same: the in-water storage of boats on the tidelands.
- 2. Adjustments.** A 40-foot mooring will have a smaller vessel moored to it, more often than not. This is because the current mooring regulations do not allow for any "overage." A 41-foot boat is not allowed to be moored to a 40-foot mooring. Likewise, a 36-foot boat, is not allowed on a 35-foot mooring. It is allowed only on a mooring which is 40-feet or larger. Therefore, there is likely a 10%-15% reduction that should be factored. The above analysis assumes a length of 37.5 as the average boat length for a boat moored to a 40-foot mooring.

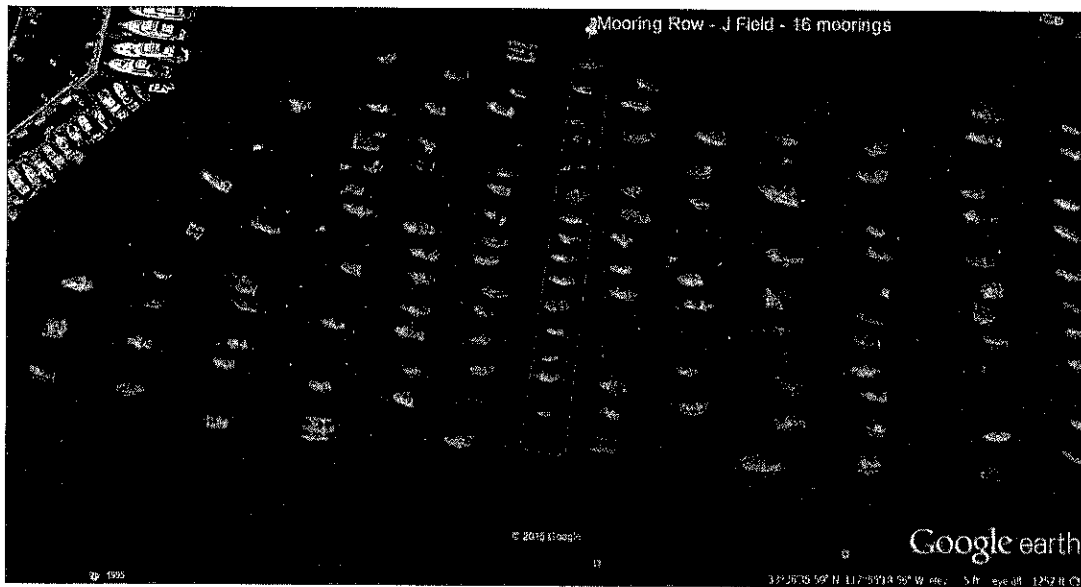
Satellite Picture of J field – American Legion and 15th Street at bottom, Lido Island at Top
566 feet long by 57.5 feet wide



(See next page for close-up satellite picture of sample row in J field)

Close-up satellite picture of sample row in J field

(566 feet long by 57.5 feet wide)



3. Paul Bahan – Biographical Notes

I am the current Commodore of South Shore Yacht Club, one of the three oldest yacht clubs in Newport Harbor, founded in 1957. Many of our members keep their boats on moorings in the harbor so we have broad experience with the conditions and water usage in the harbor.

I'm a businessman, an attorney, and a former City Attorney for the City of Santa Monica. I'm also personally a long time mooring permittee. So I have some familiarity with moorings, as well as valuation of city assets and the valuation of the use of public property.

I hope my thoughts will be of use to you.

Levin, Shannon

From: Bill Moses <bmoses@anchorprintingoc.com>
Sent: Monday, April 06, 2015 2:01 PM
To: Brad Avery; David Girling; Duncan McIntosh; Joe Stapleton
Cc: Miller, Chris; Levin, Shannon; Bill Moses - Anchor Printing
Subject: Re: Annual Mooring Fee Calculations
Attachments: Attachment A Moorings Fees- Tidelands Value Method - Bahan 4-05-15.pdf; Attachment B Establishing Fair Use Fees for Newport Harbor Moorings 6 rev 4-6-15-3.pdf; Attachment C.pdf; Attachment D Transferability, Affordability, Responsibility.pdf; NMA Study Report.pdf

Harbor Commission Chairman Brad Avery
Harbor Commissioners David Girling, Duncan McIntosh, Joe Stapleton
Harbor Resources Manager Chris Miller
Harbor Resources Supervisor Shannon Levin

Thank you all for your thoughtful and thorough efforts on the moorings.

The goal of the NMA leadership has been to assist you with useful information, work with you, and to refine our thinking by listening to you and the audiences at the meetings.

We're aware that it's time to focus. To that end we've condensed the materials that have previously been sent into one seven page "NMA Study Report," which is attached.

-Bullet point summary of our suggestions is on page one.

-Discussion and historical background is on pages two through four.

-Charts which condense data for ease of viewing are on pages five through seven.

-Attachments, which have previously been provided, are listed on page seven and are included for ready current referral by you. Minor edits and added footnotes are in attachments B and C.

I would be pleased to obtain before tomorrow's meeting answers for any questions you may have.

Thanks again for all the time you have devoted to this topic.

Bill Moses, Secretary

Newport Mooring Association

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Thank you,

Bill Moses



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Executive Summary for Establishing Fair Use Fees for Moorings

This report is submitted to assist in determining the annual fees to be charged for Newport Harbor moorings. This report does not address the transferability of moorings. Transferability is addressed in a separate report.

The Comparison Approach. The comparison approach is used in this report. The most comparable moorings are those located in San Diego Harbor. While Slip fees in San Diego are less expensive than Newport Harbor, this difference is taken into account in the report's adjustments. It should be noted that in a separate report using CPI adjustments to the fees set by almost all prior City Councils since the 1970, the CPI adjusted amount, approximately \$26 per foot per year, is approximately the same as established by the comparison approach.

For a Proper Comparison, Adjustments Need To Be Made. The monthly mooring fees in San Diego average \$147 per month for a 55 foot mooring. Slip fees in Newport Harbor are approximately 20% higher. Therefore, all things being equal, a 20% higher mooring rate for a Newport Harbor mooring could be justified. However, after allowing for the 20% *increase, certain deductions need to be made*. Among the deductions is (a) the cost, or lack of cost, of maintaining a mooring in San Diego, and (b) the availability of access docks in San Diego Harbor, compared to the unavailability of access docks in Newport Harbor.

Adjustment for the Cost to Maintain the Mooring. The San Diego Mooring Company maintains the mooring ball, chain, and weights. By contrast, the Newport Mooring permittee will spend approximately \$500 per year to maintain the equipment. Therefore, for a proper comparison, the annual permit fee in Newport Harbor should be reduced by \$500 per year.

Adjustment for the Cost of Access. San Diego has dinghy docks and storage for unlimited access without time restrictions, *at no additional charge*. Without access, a mooring has no value. In Newport Harbor the mooring permittee will need to spend \$50 to \$100 per month to store their dinghy. The annual permit fee should be reduced by this additional expense.

Conclusion

Using the comparison approach and equalizing for the negative impact of the cost of maintenance and lack of access, the annual mooring permit fee for a 40 foot mooring in Newport Harbor should be no more than \$801.60, which is \$20 per foot. Even if only \$35 per month were deducted instead of \$50 per month for the lack of access, this would still only justify a maximum annual mooring fee of \$972 per year for a 40 foot mooring. This is an annual fee of approximately \$25 per foot.

It is also the same fee established by almost all prior City Councils since the 1970s, when the prior fees are adjusted for inflation. This fact is shown in a separate report prepared by Patricia Newton. Both approaches, the comparison approach and the CPI approach, reach the same conclusion. The annual fee should not be more than \$25 per foot.

Establishing Fair Use Fees for Newport Harbor Moorings

This report is submitted by the author to provide assistance in determining the annual fees to be charged for the use of Newport Harbor moorings. This report does not address the transferability of moorings. Maintaining the ability to transfer a mooring permit is of vital importance to all mooring permittees, as it is for to all holders of government use permits, including permits for broadcasting over the airwaves, for grazing on government land, for oil and gas exploration, and other uses where the initial and subsequent permit holders have invested time and money in establishing and developing assets with the reasonable expectation that the permit rights can be transferred at a later time. The transferability issue will be address in other letters or reports.

This report is an effort to provide an “apples to apples” comparison as a guide in establishing proper fair rental value for Newport Harbor moorings. In this report, I have attempted to utilize my knowledge and 35 years of experience in evaluating rental and property values.¹ There are three traditional methods of appraising property: the comparison approach, the cost approach, and the income approach. The comparison approach is used in this report. The cost and income approaches were not used because there is inadequate data for these other approaches, and it is unclear how such data could be used even if the data could be obtained.

To establish appropriate fees for the moorings in Newport Harbor, it is my opinion that the most comparable moorings are those located in San Diego Harbor. While all harbors are unique, the desirability of a particular harbor is reflected in the slip fees boaters are willing to pay. So, for example, slip fees in Long Beach are half those in Newport Harbor, which would indicate that Newport Harbor is a more desirable location. This report is not suggesting that San Diego Harbor is as desirable as Newport Harbor. To the contrary, as will be seen, slip fees in San Diego Harbor are less expense than slips fees in Newport Harbor. This difference is taken into account in the adjustments set for the below.

The San Diego Mooring Company manages the moorings in San Diego Harbor and is the best source of accurate information about these moorings. The information contained in this report was obtained directly from the San Diego Mooring Company in the first week of February, 2015.²

The monthly mooring fees in San Diego are an average of \$147 per month for a mooring that will accommodate a 40 to 55 foot boat. As is shown below, slip fees in Newport Harbor are approximately 20% higher than the slip fees in San Diego Harbor. Therefore, all things being equal, a 20% higher mooring rate for a Newport Harbor mooring that could accommodate up to a 55 foot boat could be justified. However, all things are not equal. After allowing for the 20% increase, certain deductions need to be made to what would otherwise be higher mooring fees for Newport Harbor mooring. Among the things that are not equal is (a) the cost, or lack of cost, of maintaining a mooring in San Diego, and (b) the availability of access docks in San Diego Harbor, compared to the unavailability of access docks in Newport Harbor.

For a proper comparison, it is very important to take into account the fact that the San Diego Mooring Company maintains the entire mooring ball, chain, and weights. There is no additional cost to the mooring permittee for maintaining this equipment.

In addition, any boat on a mooring in San Diego has access to their boats, *at no additional charge*. The mooring permittee in San Diego has unlimited access. He or She is able to leave their motorized dinghies indefinitely, for any length of time, at the public docks. They have no access problem, and no additional access cost. This benefit cannot be overstated. In addition to these public docks, the mooring company also maintains beach areas where mooring permittees can store a small rowing dinghy and lock it for an unlimited amount of time to a secure chain on the beach. This is a second source of full time, unlimited, access for transportation out to the moorings.

The only way to achieve an equivalency, is to take into account (1) the cost to the permittee of having to maintain the mooring equipment, and (2) the cost to rent a place to keep a dinghy for access out to the moorings, in addition to (3) making an adjustment for the more desirability of Newport Harbor as reflected in slip rates.

The Total Cost of Maintaining a Mooring

The total cost of maintain the mooring equipment is higher than the theoretical cost. Mooring companies estimate mooring equipment maintenance at \$600 to \$800 every other year, but this does not represent the total cost. The mooring buoys need to be completely replaced every 7 to 10 years; they need repainting every few years; weight needs to be added to the bottom weight every few years, and with wind and tide, and as other boats move closer to moorings, the bottom weights need to be realigned. This cost often is about \$1,200 every other year for the inspection, replacements, weight additions, and painting, and the occasional realignment and breakage. The total cost is \$50 per month (i.e. \$1,200 divided by 24 months).

The Cost of Access

Moorings have *no value* unless there is access available to get out to the moorings. There are only two ways to get out to the moorings. One way is by rowing a small light rowing dinghy (the type that can be put on a rack or stored on the beach). This allows one or perhaps two people to row out. The preferred way is by using a larger dinghy with a motor. This allows the permittee to go out with family, guests and supplies. Access means you can use the mooring. Simply put, if you can't use it, it has no value.

The few dinghy docks owned by the City are not sufficient to provide access for the all the dinghies needed to get out to the moorings. The maximum dinghy tie up time limit is 3 days, and that is only for a handful of spots at a few of the public docks. At best, this provides access for 10% of the moorings. Only few people are able to move their dinghies every few days by playing the "dinghy scuffle game," but even they have to worry when they go on vacation or get sick. This small group is only about 10% of the boat owners, the other 90% have no place to keep a dinghy without paying for the cost of a dinghy dock. Moreover, if the City were to increase the time limit beyond the 3 days, in all likelihood the current number of dingy docks would still only accommodate about 10% of the boat owners. There is simply not enough space

to accommodate the other 90% who visit their boats once every week or two. For the other 90%, they have to make other arrangements, including renting a private dock for their dinghy.

A private dock for a dinghy in Newport Harbor would cost \$100 to \$200 per month. Even a dry storage "rack" is at least \$40 to \$50 per month³, and often requires membership in a yacht club with the added cost of monthly dues.

In comparing Apples to Apples, it is essential to take into account the fact that the San Diego moorings have both docks for the larger dinghies with motors, and also beach dinghy storage for smaller light rowing dinghies.

To achieve a true equivalency, there would need to be a \$50 to \$100 per month deduction because of the lack of full time access. If the City would provide areas along the Harbor with dinghy racks or beach chain lock up for at least the very small rowing dinghies, this would help with the access problem, but such access would still be far inferior to what is provided in San Diego, with its public docks that can accommodate in water large motorized dinghies. With the addition of some type of dinghy racks or beach storage, a smaller deduction of approximately \$50 per month would be justified.

An Accurate Comparison – getting the formula right

The first step in any comparison is to look at the difference in price between renting a mooring in San Diego Harbor and the cost of renting the same size slip. This can establish a ratio of mooring vs slip fees. The next step is to apply the same ratio in Newport Harbor. The last step would be to subtract or deduct the added costs incurred by a user of a Newport Harbor mooring compared to the use of a San Diego Harbor mooring resulting from the extra costs to be mooring permittee in Newport Harbor.

An alternative analysis would be to take the higher percent charged for a Newport Harbor slips compared to a San Diego Harbor slips, and increase the San Diego mooring rental rates by the same percent, then make the same deductions, i.e. a deduction for the cost to maintain the mooring and a deduction for the lack of access. In the end, the two methods show the same result.

Step 1 - Establishing the Correct Ratio.

The average mooring fee in San Diego for the larger moorings is approximately \$147 per month. This is the fee charged for a mooring that can accommodate a 40 to 55 foot boat. The mooring fees are the same price regardless of the size of the boat. The same is true in Newport Harbor. A 35 foot boat on a 55 foot mooring is charged as if it were a 55 foot boat on the mooring. For comparison, the per foot mooring fee in San Diego Harbor should be calculated on the maximum size boat that can be put on the mooring.¹⁴

Using just 50 feet as the maximum boat size on the San Diego mooring, the \$147 per month mooring fee is \$2.94 per foot per month.⁵ The same 50 foot boat slip in a nearby San Diego marina would rent for approximate \$22 ft per month.⁶ Therefore, using the more appropriate 50 foot comparison (because the comparable moorings in San Diego Harbor can

accommodate up to a 55 foot boat), it is clear that the cost of renting a mooring in San Diego Harbor is about 14% (13.36%) of the cost of a renting a slip of the same size. *However, the mooring fees in San Diego includes the equipment maintenance cost and includes the cost to keep a full time dinghy for unlimited access to the mooring.* If the San Diego mooring permittee had to pay the cost of maintaining the mooring and the cost of finding a place to store his or her dinghy, then \$75 to \$100 per month would be deducted from the \$147/mo fee, which would result in a monthly fee of between \$47 to \$72 per month for a 50 foot boat, which would be between \$1.00 to \$1.44 per foot per month, or a maximum **net** ratio of 6.5% of the cost of renting a slip. The **net** ratio is approximately one-half of the **gross** ratio of 14%.

Step 2 - Using the Ratio.

Slips in Newport Harbor are located at private home docks and a few marinas. Some private home docks rent out their slips. Eliminating the “high-end” marinas, and looking at the average marinas and private home dock rental rates (not “asking prices”), it would appear that the average monthly cost for a 40 foot slip is about \$24 to \$28 per foot/mo.⁷ (This is about 20% higher than the rental rates for a 40 foot slip in San Diego Harbor.)

At \$28 per foot, a 40 foot slip would be \$1,120 /mo (\$13,440 per year). Applying the 14% gross ratio to the moorings in Newport Harbor, the fee for a mooring would be \$156.80 per month, but only if, like San Diego, the City of Newport Beach maintained the mooring equipment and also provided full time dinghy access. Applying the net ratio of 6.5%, the fee for a mooring in Newport Harbor should be no more than \$72.80 per month (or \$873.60 per year, which is approximately \$22 per year per foot).

Step 3 - Equalizing Comparables to Account for Maintenance and Access Issues.

If the net ratio of 6.5% is used, then there is no need to further equalize the comparative pricing, since this has already been taken into account with the reduction of the ratio from 14% to 6.5%. However, if the gross ratio of 14% is used, then as a final step, the added cost of maintenance and cost of access needs to be deducted from the fees a permittee should pay for use of a mooring. 14% of \$1,120, is \$156.80 per month. From the \$156.80 appropriate deductions should then be made because the City of Newport Beach does not provide the maintenance of the mooring equipment, and has not been able to provide dock space for full time access to the moorings. These costs are borne by the permittee, as follows: \$40 maintenance per month, and no less than \$50 per month for the cost of access. The net result after these deductions would be a fee of \$66.80 per month (which is \$801.60 per year, or approximately \$21 per year per foot).

An alternative formula would be to increasing the San Diego mooring rental rates by 20% because the Newport Harbor slips have a 20% higher rate, then make the deductions related to the cost of maintenance and lack of access. For this alternative formula, a 50 foot mooring is used instead of a 40 foot mooring because the comparable San Diego mooring can accommodate a 55 foot boat. Using this formula, the mooring fee would be \$176.40 per month (\$147 increased by 20%) for a mooring that would accommodate a 50 foot boat, less \$40 per month for maintenance of the mooring, less \$50 per month for the cost of access. This would result in a monthly fee of \$86.40, which is \$1,036 per year for a 50 foot mooring, or approximately \$21 per year per foot, the same amount as shown under the “Ratio” formula.

Conclusion

Using the comparison approach and equalizing for the negative impact of the cost maintenance and lack of access, the annual mooring permit fee for a 50 foot mooring in Newport Harbor should be no more than \$1,036, and the annual mooring permit fee for a 40 foot mooring in Newport Harbor should be no more than \$801.60. This is an annual fee of \$20 per foot, which is fully justifiable and defensible. Even if only \$35 per month were deducted instead of \$50 per month for the lack of access, this would still only justify a maximum annual mooring fee of \$1,166 for a 50 foot mooring and \$972 per year for a 40 foot mooring, which is an annual fee of approximately \$25 per foot.

Respectfully Submitted,

L. Scott Karlin

Report rev 4/6/15

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Footnotes:

¹ I have over 35 years working in real estate, as a real estate broker, being broker of record to corporations focused on both commercial property and business sales, as well as my 35 years as an attorney working in the area of real estate law. I am very familiar with all the methods of appraising real estate and in appraising personal and business property. I have also been a mooring permittee in Newport Harbor, and boat owner for over 12 years, and am very familiar with the slips and moorings in Newport Harbor.

² To view the San Diego Mooring Company, rental rates, the website: is
<http://www.sandiegomooring.com/rates.htm>

³ In the first months of 2015, the American Legion offered approximately 24 dry storage racks it its members at \$45 per month. Within one week all of these racks were taken. This would suggest that the cost of out of the water dinghy storage is at least \$45 dollars per month. While the City has recently offered a "lottery" for similar storage racks at \$25 per month, the market data based on the American

Legion racks would indicate that \$25 per month is well below market. The American Legion racks were modeled on the City's racks, so they are virtually identical.

⁴ A prior comparison of San Diego mooring pricing to slip pricing was flawed in two important ways. First it assumed a 40 foot boat on a 40 to 55 foot mooring, which resulted in a higher per foot cost for the use of a mooring. This was inappropriate since it is customary to assume the maximum size boat on a mooring or slip for price comparisons. Second, the study did not account for the fact that the San Diego mooring permittee was saving \$40 or more per month by not maintaining the mooring and another \$50 per month by having a place for unlimited storage or docking for his or her dinghy. If the prior study were to be used, these adjustments would need to be made to the study.

⁵ It is noteworthy that a 65 foot mooring in the popular America's Cup Harbor in San Diego rents for \$157.07 per month. That is \$2.45 per foot per month. A 65 foot slip in San Diego would cost about \$24 per foot per month. Therefore in San Diego Harbor, a 65 foot mooring rents for 10% of the same size marina slip, and the mooring rental includes the cost of maintaining the mooring and includes a full time dinghy dock.

⁶ Published rates for the Kona Kai marina on Shelter Island in San Diego Harbor show the rate for 50 foot slips at between \$23 and \$24 per foot per month.

⁷ There are higher asking prices for home dock slips and for marina slips in Newport Beach, but often there are incentives given in the marinas, and home slip rentals often settle on lower prices, and often are not increased over time, so that the actual amounts paid by a boat owner are below the asking prices for home slips and posted rates in the marinas.

**NEWPORT MOORING ASSOCIATION
HARBOR COMMISSION STUDY REPORT**

April 5, 2015

TO: Newport Harbor Commissioners
FROM: Newport Mooring Association
APPROVED BY: Newport Mooring Association Board of Directors

SUBJECT: Mooring Charges, Mooring Permit Transfers and Other Mooring Operations

RECOMMENDATION:

This report was approved by the NMA Board and is our recommendation to the Newport Harbor Commission that the following points be incorporated into its recommendation to the City Council.

The discussion and impact sections follow the standard City Staff Report format. The discussion section and attachments provide more detailed analysis including the legal and public policy rationale supporting the recommendations. The Impact section shows the effects of the proposed changes.

Four attachments are listed at the end of page 7. Attachment A, "Valuation Based on Tidelands Appraisal" has not been circulated until now. The other referenced documents (B, C, and D) have been circulated and are attached for the record. All are available on the NMA website.

Set annual permit fee at \$25 per foot and establish a uniform billing process

- Valuation based on 3 methods; 2013 Tidelands appraisal, San Diego Comparable & CPI
- Currently Newport residents are billed periodically for fees whereas non-residents must pay the annual fee in full. Adopt a billing process so all permittees are billed at the same frequency.
- Set initiation of the new rate retroactively

Allow mooring permit transfers and a market driven process

- Establish web based listing for moorings for sale
- Limit transfers to one per year
- Permit holder cannot hold more than 2 permits (current policy)
- Additional permits allowed at Harbor Resources Manager's discretion (current policy)
- Allow transfer of permit with or without Assigned Vessel (current policy)
- Allow inter family and Trust transfers (current policy)
- One for one exchanges allowed with permission of Harbor Resources Manager (current policy)
- Mooring permit is renewable annually (current policy)

Permit Transfer Fee

- 50% of annual fees (approximately \$500 for 40' mooring)
- Flat fee of \$ 150 for inter family, Trust transfers and transfers by inheritance

Allocation of City Rental Income of Vacant Moorings

- 50% of annual revenue is allocated to the general Tidelands fund
- 50% of annual revenue earmarked in the Tidelands fund for mooring permittee and visiting mooring renters amenities such as showers, wash down stations, dinghy storage, shore-line connections for dinghy's, etc.

Eliminate Mooring Wait List

- Over the last 4 years it is apparent the wait list is ineffective and does not serve the best interests of the boating public as envisioned

DISCUSSION:

The City's tidelands trust, also known as the Beacon Bay Bill (Chapter 74 of the Statutes of 1978), dedicates certain tide and submerged lands ("Tidelands") are held in trust by the City on behalf of the people of California. These lands include most of Lower Newport Bay, home to about 1,200 onshore and offshore moorings, as well as residential piers, commercial piers, and other operations.

The Beacon Bay Bill directs that the City manage the Tidelands as follows:

The lands shall be used by the city and its successors for purposes in which there is a general statewide interest, as follows:

1. For the establishment, improvement, and conduct of a public harbor; and for the construction, maintenance, and operation thereon of wharves, docks, piers, slips, quays, ways, and streets, and other utilities, structures, and appliances necessary or convenient for the promotion or accommodation of commerce and navigation.
2. For the establishment, improvement, and conduct of public bathing beaches, public marinas, public aquatic playgrounds, and similar recreational facilities open to the general public; and for the construction, reconstruction, repair, maintenance, and operation of all works, buildings, facilities, utilities, structures, and appliances incidental, necessary, or convenient for the promotion and accommodation of any such uses.
3. For the preservation, maintenance, and enhancement of the lands in their natural state and the reestablishment of the natural state of the lands so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.

Further, in the management, conduct, operation, and control of the lands or any improvements, betterments, or structures thereon, the city or its successors shall make no discrimination in rates, tolls, or charges for any use or service in connection therewith.

In the opinion of the Newport Mooring Association, the Beacon Bay Bill obligates the City to charge appropriate and non-discriminatory rates for the use of tidelands. Allowing mooring permit transfers as prescribed herein does not confer a benefit to private individuals for the use of public property and is not in violation of the California Constitution (Article XVI, Section 6) prohibition on gifts of public funds. Allowing transfers of mooring permits is a matter of Council policy and is not a question of law.

On January 27, 2015, the City Council instructed the Harbor Commission to study and make a recommendation regarding mooring permit transfer procedures, fees charged for moorings and administration of the moorings. It was apparent that with the Ordinance No. 2010-26 and the resolution 2010-132, that there were significant inconsistencies with respect to the City's obligations as noted above including, but not limited to:

- annual fees;
- permit transfers allowed;
- permit transfer fees; and,
- administration of moorings.

Under Resolution 2010-132 mooring rates were increased over a five period duration (starting with an increase in 2011 and ending in advance of the 2015 billing) to 14% of an average of low- to moderately priced marinas' berthing rates in Newport Harbor. This Marina Index was structured as the basis for

charging both onshore moorings based on the length of the boat, and offshore moorings, based on the approved length of the mooring. This rate far exceeds a fair and reasonable charge when compared to professional methods of assessing fees:

- Appraised values of Tidelands useable for boat storage at 50 – 55 cents per square foot
- Adjusted comparable San Diego rate of \$25/ft
- CPI based adjustment of \$21-25 per foot

Under Ordinance No 2010-26 limitations were imposed to reduce and ultimately eliminate mooring transfers with the exception of inter family and Trusts. From January 1, 2021 any permits would revert to the city if a permittee decided to give up their permit. The objective of this change was in part to improve the prospects of those on the wait list for moorings. However in the years since this Ordinance has been in effect only one person from the wait list has elected to take a permit despite the availability of 5 moorings. For this reason and others it has been determined the wait list does not serve the boating public as envisioned.

- We believe a more market driven process with some limitations will deter speculation as the moorings should be an affordable option for Californian residents in particular.
- We also believe introducing greater transparency into the permit transfer process will further alleviate concerns about possible speculation.

There has been some concern expressed that if the City does not manage the Tidelands appropriately there is a danger of the State Lands Commission will take back control of the Tidelands. Based on the recommendations in this report and our own inquiries on the matter, we feel there is very little risk of such an action as the recommendations are fair, reasonable, and aligned with the Tidelands Trust. Further, the mooring permittees are contributing substantially to the Tidelands Fund and provide a significant public benefit as discussed in greater detail below.

Annual Mooring Fees and Permit Transfer Fees

The adoption of the Fee Resolution 2010-132 which implemented the Marina Index as the basis for assessing annual mooring fees has resulted in unreasonable fees for the use of Tidelands by mooring permittees. The use of an index based on commercial marina fees is an “apples to oranges” approach and it also guarantees at least 6% increases annually given the fee history of the commercial operators included in the index, which is far in excess of CPI measures. As discussed more completely in attached documents, the Marina Index should be scrapped in favor of evaluating fair and reasonable fees considering the results of three professional methods of valuation.

- The current fee of \$55 per linear ft. is unreasonable and out of line by several measures
- A reasonable fee is \$25 per linear foot (please see Attachments A, B & C):
 - Appraised values of Tidelands useable for residential piers is 50 - 55 cents per square foot this equates to \$21 to \$25 per foot.
 - Adjusted Comparable San Diego is \$20 to \$25/ft.
 - CPI based adjustment would be \$25/ft.
- How do we compensate permittees for the years overcharged?
 - Harbor Commissioners has advised this is a matter for the City Council to decide

History on Permit Transfers

Ordinance No. 2010-26 was intended to eliminate most, but not all mooring permit transfers. As a public policy this is unreasonable and it ended a Council policy that had been in place for 80 years. The concerns driving the change were overstated as to the level of speculation. Also the legal rationale

presented in public meetings and stated in the "Whereas" section of the Ordinance was incorrect and misleading. The City Attorney in 2013 acknowledged allowing mooring permit transfers is a matter of Council policy and was not a gift of public funds.

- Historical policy supports transfers (please see Attachment D)
 - Early boaters were encouraged by Government to set up moorings
 - Changing the long established policy on transfers was unfair
- Permit holders for other public resources are allowed to transfer permits
 - Radio & TV networks on public airwaves
 - Oil & Gas exploration
 - Grazing rights
 - Commercial Fishing

Transferability

Allowing a more market driven process will better serve the boating public as it will allow greater choice of location to suit the needs of interested parties. By limiting the number of permits allowed, concerns about speculation are alleviated. Establishing a web site for moorings for sale will provide greater transparency as to when moorings become available.

- Transferability Promotes Affordable Access (please see Attachment D)
 - Limitations on amounts received and high transfer fees hamper affordability and access
 - Auctions would hamper affordability and access
 - Transferability Means Responsibility
- Transferability Promotes Transparency
- Transferability Does Not Result in Windfall Profits

Public Benefit

Moorings in Newport Harbor have a long history and an important function in allowing greater access to the harbor by those wishing to store their boats. They also provide a safe haven and improved navigational safety as they are in well-defined areas in the harbor.

- Mooring transfers are not illegal...but value must be given back to the public.
- Mooring Permittees give back to the public in several ways:
 - Annual fees paid into the Tidelands Fund are the highest of any user group
 - Vacant moorings are used by visiting yachts and the fees paid go to the Tidelands fund
 - Permittees maintain the mooring tackle to ensure the harbor is a safe haven and safe for navigation
 - Yacht clubs sponsor races & regattas, education, youth programs and community fund raising activities

In the chart below there are the 2015 estimated contributions based on current fees (with the exception of Commercial which are shown with 2011 contributions). The total contributions to the Tidelands funds from moorings is **\$2.067 million** (combined Moorings, Yacht Clubs and Lido c.a.), based on the current annual fees, rental income collected by the City on vacant moorings and estimated transfer fees. However for a truly fair comparison to the other two user groups we need more accurate information, however it seems clear the current fees charges are substantially out of line with other users.

Current Fees	Annual Fees	Rental Income for Fund	Total Contributions
Moorings: 439 onshore 539 offshore	\$ 1,678,947	\$ 80,000	\$ 1,758,947
Yacht Clubs: 142 offshore moorings Lido Isle c.a.: 46 onshore moorings	\$ 308,638	\$ -	\$ 308,638
Commercial actual 2011	\$ 566,000	\$ -	\$ 566,000
Residential Docks assume 1220 * avg 982 sq. ft.	\$ 589,200	\$ -	\$ 589,200

Using recommended fees below, the contribution to the Tidelands Fund by mooring users is more reasonable at **\$966,963** (mooring, yacht clubs and Lido Isle c.a. combined) compared to Commercial and Residential Docks. As before we need more information as to contributions from Commercial and Residential Docks to make this comparison fair and accurate.

Recommended Fees	Annual Fees	Rental Income for Fund	Total Contributions
Moorings: 439 onshore 539 offshore	\$ 757,238	\$ 80,000	\$ 837,238
Yacht Clubs: 142 offshore moorings Lido Isle c.a.: 46 onshore moorings	\$ 129,425	\$ -	\$ 129,425
Commercial actual 2011	\$ 566,000	\$ -	\$ 566,000
Residential Docks assume 1220 * avg 982 sq. ft.	\$ 589,200	\$ -	\$ 589,200

Public Policy and Tidelands

- The transfer of mooring permits is a policy question to the Council, not a legal question.
- Administration of the Tidelands should be equitable for all using the Tidelands for essentially the same purpose, in this case boat storage.
- Mooring fees and charges should be on a par with residential pier permittees.
- Mooring permit transfers should be allowed as residential pier permits are allowed to transfer freely with the sale of property.
- There are inconsistent policies with respect to the administration of boat storage.
- Equal Treatment is required under the Tidelands Trust.

Below is a chart which illustrates some of the aspects of Tidelands administration where there are some inconsistencies in how Tideland users are treated under current policies. We believe there can be sensible modifications to better align the policies with the Tidelands Trust of fairness and equal treatment.

For example, one aspect of inconsistent administration is the Newport residents are billed periodically for their fees whereas non-residents must pay the full annual fee when billed. By issuing a utility type bill, this discrepancy can be eliminated.

	Permit Transfer Allowed	Permit Transfer Fee	Profit Allowed	Rental Income Allowed	Rental Income To Tidelands Fund	Annual Fee Adjustment
Offshore Moorings (assume 40')	Two times until 2021, thereafter only Intra family and Trust	\$1,100 (50% annual fee)	None after 2021 mooring tackle reverts to City	NO	\$80,000 per year	YES
Yacht Club & Lido c.a. Moorings	Yes moorings may be reassigned by Clubs/Lido	N/A	N/A	YES	NONE	YES
Residential Docks		\$285	YES	YES	NONE	NONE

The City's General Plan speaks to a broad goal that onshore and offshore moorings should remain a more affordable method of bringing boating to the general public (more affordable than berthing). This is in part described in the General Plan's *Harbor and Bay Element*, Section 5.2, which reads:

Provide a variety of berthing and mooring opportunities throughout Newport Harbor, reflecting state and regional demand for slip size and affordability...

- We believe the recommendations made in this report achieve the goal of the City's General Plan of affordable moorings and as importantly aligns with the Tidelands Trust that all Tideland users be treated fairly and equitably.

Rental of Vacant Moorings

Under the current ordinances, the City may rent vacant moorings and historically has collected about \$80,000 per year. Mooring permittees generally are in favor of allocating 50% of the revenue toward amenities that will benefit visiting boaters renting moorings and permittees, including but not limited to:

- Dinghy storage racks
- Convenient onshore toilet and shower facilities
- Parking permits in neighborhood parking areas
- Wash-down areas
- Sand lines for permittee dinghies in areas such as the Marina Park
- Public dock permits for mooring permittees to allow longer periods ashore for shopping, dining etc.

IMPACT

Mooring fees increase 25% over 2010 vs. 177%

Tidelands Contributions are more in line with the Tidelands Doctrine

	Permit Transfer Allowed	Permit Transfer Fee	Profit Allowed	Rental Income Allowed	Rental Income To Tidelands Fund	Annual Fee Adj.
Moorings (assume 40')	YES, with limits	50% annual fee (\$500 for 40' mooring)	Speculation limited by transparency, frequency & number	No	\$80,000 per year 50% goes to Mooring amenities fund	TBD
Residential Docks	YES	\$285	YES	YES	None	NO
Yacht Clubs and Lido Isle C.A.	N/A	N/A	N/A	YES	None	TBD

The Harbor Commission conducted study sessions during 2015 including February 11th & 23rd, and March 9th & 23rd

Attachments: A – Valuation based on Tidelands appraisal
 B – Establishing Fair Use Fees for Newport Harbor Moorings
 C – CPI Analysis
 D – Newport Harbor Moorings – Transferability, Affordability, and Responsibility

Comparison of Actual Mooring Fees Charged to CPI Adjusted by Patricia Newton							
Year	CPI - U LA, Riv & OC	Annual Rate of Inflation	Mooring Rate per Foot Charged	Adjust Per CPI only	Over/Under Charges	Over/Under Charge for 40 ft Mooring	Over/Under Charge for 50 ft Mooring
1976	56.9		\$6.00				
1977	60.8	6.85%	\$6.00	\$6.41	-\$0.41	\$16	-\$21
1978	65.3	7.40%	\$6.00	\$6.89	-\$0.89	\$35	-\$44
1979	72.3	10.72%	\$6.00	\$7.62	-\$1.62	\$65	-\$81
1980	83.7	15.77%	\$6.00	\$8.83	-\$2.83	\$113	-\$141
1981	91.9	9.80%	\$10.00	\$9.69	\$0.31	\$12	\$15
1982	97.3	5.88%	\$10.00	\$10.26	-\$0.26	\$10	\$13
1983	99.1	1.85%	\$10.00	\$10.45	-\$0.45	\$18	\$22
1984	103.6	4.54%	\$10.00	\$10.92	-\$0.92	\$37	\$46
1985	108.4	4.63%	\$10.00	\$11.43	-\$1.43	\$57	\$72
1986	111.9	3.23%	\$10.00	\$11.80	-\$1.80	\$72	\$90
1987	116.7	4.29%	\$10.00	\$12.31	-\$2.31	\$92	\$115
1988	122.1	4.63%	\$10.00	\$12.88	-\$2.88	\$115	\$144
1989	128.3	5.08%	\$15.00	\$13.53	\$1.47	\$59	\$74
1990	135.9	5.92%	\$15.00	\$14.33	\$0.67	\$27	\$33
1991	141.4	4.05%	\$15.00	\$14.91	\$0.09	\$4	\$4
1992	146.5	3.61%	\$15.00	\$15.45	-\$0.45	\$18	\$22
1993	150.3	2.59%	\$15.00	\$15.85	-\$0.85	\$34	\$42
1994	152.3	1.33%	\$15.00	\$16.06	-\$1.06	\$42	\$53
1995	154.6	1.51%	\$15.00	\$16.30	-\$1.30	\$52	\$65
1996**	157.5	1.88%	\$20.00	\$16.61	\$3.39	\$136	\$170
1997	160.0	1.59%	\$20.00	\$16.87	\$3.13	\$125	\$156
1998	162.3	1.44%	\$20.00	\$17.11	\$2.89	\$115	\$144
1999	166.1	2.34%	\$20.00	\$17.51	\$2.49	\$99	\$124
2000	171.6	3.31%	\$20.00	\$18.09	\$1.91	\$76	\$95
2001	177.3	3.32%	\$20.00	\$18.70	\$1.30	\$52	\$65
2002	182.2	2.76%	\$20.00	\$19.21	\$0.79	\$31	\$39
2003	187.0	2.63%	\$20.00	\$19.72	\$0.28	\$11	\$14
2004	193.2	3.32%	\$20.00	\$20.37	-\$0.37	\$15	-\$19
2005	201.8	4.45%	\$20.00	\$21.28	-\$1.28	\$51	\$64
2006	210.4	4.26%	\$20.00	\$22.19	-\$2.19	\$87	-\$109
2007	217.338	3.30%	\$20.00	\$22.92	-\$2.92	\$117	-\$146
2008	225.008	3.53%	\$20.00	\$23.73	-\$3.73	\$149	-\$186
2009	223.219	-0.80%	\$20.00	\$23.54	-\$3.54	\$142	\$177
2010	225.894	1.20%	\$20.00	\$23.82	-\$3.82	\$153	\$191
2011	231.928	2.67%	\$26.52	\$24.46	\$2.06	\$83	\$103
2012	236.648	2.04%	\$30.70	\$24.95	\$5.75	\$230	\$287
2013	239.207	1.08%	\$38.73	\$25.22	\$13.51	\$540	\$675
2014	242.434	1.35%	\$47.64	\$25.56	\$22.08	\$883	\$1,104
2015 f/	239.5	-1.19%	\$55.43	\$25.26	\$30.17	\$1,207	\$1,509
			Actual	Proposed			
Cumulative Over Charges (after deducting any under charges)						\$2,199	\$2,749

** Rate applied the length of mooring vs. length of boat sometime between 1996 & 1998.

This means the effective rate was higher than \$20.

January 2010 to Jan 2015 shows a 29.44% increase, so \$20 in 2010 = \$21.35 in 2015

January 2003 to Jan 2015 shows a 29.44% increase, so \$20 in 2003 = \$25.89 in 2015

2003 is a reasonable base year given frequency of historical increases and change in length charged

Annual Mooring Fees - Tidelands Value Method

by Paul Bahan

This report introduces a third method for establishing the annual mooring fees for Newport Harbor. I believe the three most defensible methods for establishing annual mooring fees are:

1. CPI adjustments in line with historical CPI adjustments,
2. Comparable Approach, with adjustments for cost of maintenance and lack of access, and
3. Value of Use of Tidelands.

In other reports submitted to the Harbor Commission, the CPI and Comparable Approach established that the annual mooring fees should not exceed approximately \$25 per foot. The following is a third defensible method for establishing the annual mooring fees.

Tidelands Value Method

This method starts with the same assumption used in establishing the fees to be charged for other uses of tidelands, namely the value of the use, which was established by appraisal, is approximately 50 cents per square foot for the area taken out of the public's use or navigation.

As I've contemplated the actual uses of the mooring fields from the perspective of use by boaters, I've found myself with two logical analytical approaches. I've called the first the Exclusive Tideland's Use. It assumes an entire row of moorings is out of use by the public for navigation and most recreational purposes. I've called the second the Non-Exclusive Tideland's use. It assumes that there is an area between the individual moorings in a row of moorings where some public use is still made of the tidelands such as kayaking and paddle boarding.

The Exclusive Tideland's Use Method. In this approach, an area is calculated which represents the area of tidelands occupied by a row of moorings, with the idea that this row interferes with other public uses of tidelands and is not very navigable. Winds and tides may shift boats side to side within the row. Therefore this approach assumes the entire row is out of use by the public. (footnote 1) But the public does use some of the area, so a second approach has also been used.

One of the more crowded rows in the J field is approximately 566 feet long with 16 moorings. This can be seen on Google Earth, with measurements taken on Google Earth, as shown in the satellite photos below. If each of the moorings in the row were 40 feet, and allowing 10 feet of forward space and 10 feet of space to the rear of the boats, then each mooring would take up 60 feet in length. However, the average actual average length of boats on a 40-foot mooring is only 37.5 feet, so the effective total length to be used is 57.5 feet ($37.5 + 10 + 10$). (footnote 2).

Exclusive use Calculations: The 566 foot long row, with 16 moorings with an effective length of 57.5 feet, buoy to buoy, interferes with 32,545 sq. ft. of tidelands. Dividing this by the 16 moorings in the row, each mooring interferes with 2,034 sq. ft. of tidelands, assuming exclusive use and no other recreational use between the moorings. At 50 cents per foot, that would be an annual fee of \$1,017 for a 40-foot mooring, which is \$25.43 per foot.

The Non-Exclusive Tideland's Use Method. In this method or approach, an area is calculated which represents the area of tidelands occupied by a row of moorings with the idea that *only part of the row interferes with other public uses* of tidelands and is not completely navigable.

As in the Exclusive use, we will look to one of the more crowded rows in the J field, which is approximately 566 feet long, with 16 moorings. However, we assume that there is a 12-foot wide area between the individual moorings that can be used for *some, but not all*, recreational purpose, such as kayaking, and paddle boarding. It is understood that this area will not accommodate other uses such as sailboat racing or large powerboat navigation at normal speeds, etc. Because of the restricted use, we use only 50% of this 12-foot wide area for our calculation. We use, therefore, 6 feet, instead of 12 feet for this area.

Non-Exclusive Use Calculations: There are 15 such areas (between the 16 boats). $15 \times 6 \text{ feet} = 90 \text{ feet}$ in the row that is available for some recreation. The 566 foot long row, is therefore reduced by 90 feet, for an effective semi-exclusive use of 476 feet by the moorings in the row. Again, assuming a 37.5 foot boat with 10 feet in front and in back of the boat to the mooring buoy, that is 57.5 feet ($57.5 \text{ feet} \times 476 = 27,370 \text{ sq ft}$ of tidelands). Dividing this by the 16 moorings in the row, then each mooring interferes with 1,710 sq ft of tidelands. At 50 cents per foot, this would mean an annual fee of \$855 for a 40-foot mooring, which is an annual fee of \$21.38 per foot.

Conclusion.

Using the Tidelands Value Method, the appropriate annual fee for a mooring is between \$21.38 and \$25.43 per foot, depending on the extent to which the public may still have some use of the area between moorings.

Respectfully Submitted,

Date: April 5, 2015

Paul Bahan

Paul Bahan,
Commodore South Shore Yacht Club

(I've included some personal biographical background in footnote 3)

Footnotes and Photos:

- 1. Piers and Moorings.** This method uses the same valuation as one method used for piers, but applies the valuation to the particular facts and considerations that apply to moorings. However, this approach acknowledges that there are significant differences between moorings and piers and floats. These differences include the fact that boats on moorings move with winds and tides, and the fact that piers are close to the shoreline, and at low tide, piers are in areas that are less navigable. Additionally, there is nearby access from these pier area tidelands to the shore. However the fundamental use is the same: the in-water storage of boats on the tidelands.
- 2. Adjustments.** A 40-foot mooring will have a smaller vessel moored to it, more often than not. This is because the current mooring regulations do not allow for any "overage." A 41-foot boat is not allowed to be moored to a 40-foot mooring. Likewise, a 36-foot boat, is not allowed on a 35-foot mooring. It is allowed only on a mooring which is 40-feet or larger. Therefore, there is likely a 10%-15% reduction that should be factored. The above analysis assumes a length of 37.5 as the average boat length for a boat moored to a 40-foot mooring.

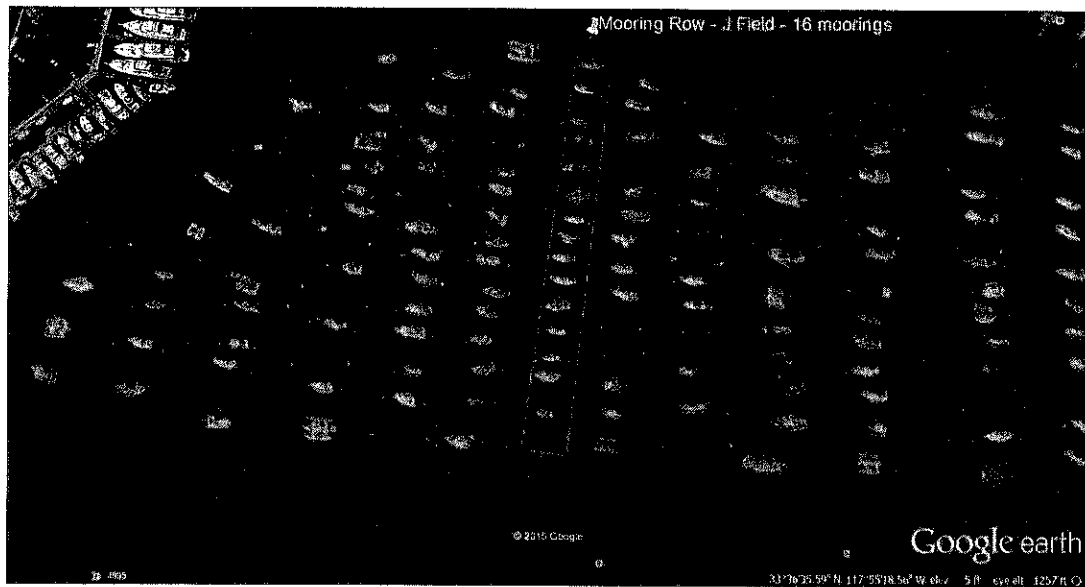
Satellite Picture of J field – American Legion and 15th Street at bottom, Lido Island at Top
566 feet long by 57.5 feet wide



(See next page for close-up satellite picture of sample row in J field)

Close-up satellite picture of sample row in J field

(566 feet long by 57.5 feet wide)



3. Paul Bahan – Biographical Notes

I am the current Commodore of South Shore Yacht Club, one of the three oldest yacht clubs in Newport Harbor, founded in 1957. Many of our members keep their boats on moorings in the harbor so we have broad experience with the conditions and water usage in the harbor.

I'm a businessman, an attorney, and a former City Attorney for the City of Santa Monica. I'm also personally a long time mooring permittee. So I have some familiarity with moorings, as well as valuation of city assets and the valuation of the use of public property.

I hope my thoughts will be of use to you.

Newport Harbor Moorings Transferability, Affordability, and Responsibility

This report addresses current and past policies on the transfer of mooring permits in Newport Harbor. The report first looks at the history of the moorings, and then addresses how to best honor this history while at the same time increasing accessibility and affordability of moorings. The report also addresses how to encourage responsible use of the moorings and the boats on the moorings. The report concludes that the goals of Affordability and Responsibility are best achieved through an active, unrestricted market, together with the reduction of the current excessive annual fees being charged by the City for the use of moorings. In short, this report finds that, like other goods and services, a free market with rights to transfer results in affordability and promotes responsibility.

Historical Policy Supports Transfers

Moorings in Newport Harbor were pioneered by early boaters who were encouraged to contribute to the development of the harbor by establishing moorings which allowed boaters affordable use of the harbor.¹ These early pioneers experimented with different arrangements, including anchors, weights, single point and double point moorings, and various tackle. Some things worked, others didn't. Prevailing winds and differing currents in areas of the harbor were found to affect the moorings and boats. Adjustments were made for tides and the seasonal winds and storms which could come from different directions, including the occasional Santa Ana winds and winter storms. Equipment was placed, lost, broken, modified and redone at significant cost to the pioneers of the day. In some cases, costs resulted from property damage, and there was always the risk of injury from a boat breaking loose. The establishment of the moorings by individuals and some Yacht Clubs was encouraged by agencies having oversight, including the Federal Government, State Government and City of Newport Beach, all at the risk and expense of these boating pioneers.

With the addition of the moorings in the 1930s, boating activities flourished. Tourism and property values increased significantly, all to the benefit of the local businesses and property owners, as well as to the benefit of boaters. The symbol of Newport Beach became the sailboat. Moorings were given formal approval. The City did not question the right of the persons who developed the mooring to transfer his or her right to use the mooring to a family member, a friend, or to another boat owner. No one questioned the rights of those who received the mooring by transfer to do the same. Yacht Clubs were among these early pioneers. They and other groups were able to establish programs which developed sailing and boating skills for children, as well as educational programs which developed leadership skills.

In the 1970s, the City of Newport Beach took over the administration of the technical requirements for moorings and established use fees for boats on moorings. A reasonable fee was imposed for the use of the harbor and uniform regulations put in place. In doing so, the City was not charging a fee for something the City or State had developed. The development had been accomplished by these early pioneers at their risk, expense, and safety, not at the risk or expense of the City or State.

It is instructive to look at other public resources developed through the permit process. Permit holders with rights to use public resources have a long and accepted history in this country, to the benefit of both the permit holder and to the Nation. Radio and Television networks, for example, were developed knowing that the airwaves belonged to the public. Oil and Gas exploration is another example of a permitted use on and under public land. Grazing rights is a third example. Ranchers are allowed the use of public lands for grazing cattle. In every case, the development by the private sector would not have occurred unless the permit holder was assured that the permit could be transferred. Because of the great risk inherent in these early endeavors, the enterprise would never have been attempted by the early pioneers unless they had the implied understanding that what they developed was transferable to those who followed. Simply put, without transferability the endeavor would have been a waste of time.

In connection with these endeavors, the government, of course, had, and has, the right to ask the permit holders to give back something for the public good. In the case of oil and gas rights, a fee based on a percent of sales was, and is, charged, in the case of television airway rights, the station is required to offer programming with public content, such as news, election coverage, and other public interest services. In the case of moorings, the permittees give back significantly to the public. They give back by maintaining the equipment available to other boaters when boaters seek shelter from the sea. They give back by providing moorings for major events, such as the Newport to Ensenada race, the largest International Race in America. They give back by paying an annual fee to the City. They give back by being the eyes and ears of the Harbor, reporting problems to the City, and the permittees which are Yacht Clubs give back with the many educational and children's programs, including sailing, boating and water safety programs. Our system of transferable permits has a long history. It is a win-win for government, for the people, and for the permit holders. The denial of transferability to the pioneers and their transferees is not only contrary to the history and spirit of this great enterprise, the destruction of transfer rights hurts the City and the public.ⁱⁱ

The American people have benefited from the private sector's development of public resources. The few examples mentioned above demonstrate this: the development of radio and television, the development of oil reserves with the resulting reduction of dependence on foreign oil, and the availability of affordable meat as a result of grazing rights on public land. None of these activities are "giveaways," rather these are great benefits to the American people. These public benefits have been achieved at great risk to those early pioneers, and to those to whom the rights were transferred, and who continue to contribute to the development and maintenance of these resources. A look at this history provides an understanding of why transferability of mooring permits is good public policy.

Transferability Promotes Affordable Access

Affordable access to public resources, including access to sailing and boating activities in Newport Harbor is good public policy, provided that the activity is done safely and responsibly. While public access is something to be encouraged, it is not a right. Everyone, for example, does not have the right to own a radio or television station. There are only so many airwaves and channels. It would not be fair to the pioneers of these resources to lose their permits, just because some folks think that everyone should have the right to own a television channel by

putting themselves on a waiting list. CBS, NBC, and ABC should not be required to give up their permits to people on a waiting list who are unwilling to compensate the networks for the development they, or their predecessors, have done. The resource is limited. It was the early pioneers who, at great risk, developed these resources. They did so with the expectation of being able to transfer them in the future. These original permit holders and their successors should continue to have the right to transfer their permits without the threat of losing the permit to a person on an artificial list.

Affordable access is best achieved by acknowledging, furthering, and encouraging transferability. Here's how: A holder of a permit with full rights to transfer can transfer his or her rights by (a) a sale with full payment at the time of transfer, (b) a sale with a small down payment with payments over time (an installment sale), or (c) if allowed, a long-term rental or sublease (sublease rights are not currently allowed, but for the reasons below should be reconsidered).

On the other hand, when rights to transfer are limited, access is reduced or denied in three ways. First, with restrictions on transfer, there are fewer moorings available for purchase. Second, with fewer available, the price goes up, not down. Third, the current restriction on long-term rentals eliminates the availability of moorings to those who may not have the ability to acquire a mooring.

As mentioned above, the transfer of mooring rights can take many forms. The person selling the mooring rights can require a one-time payment, or he or she could require only an initial down payment and accept payments over time. The holder of the permit could also consider, if allowed, entering into a long-term rental of the mooring. Currently, long and short term leases of moorings are not allowed, but for reasons set forth below, eliminating this restriction would increase affordability and would provide much more public access.

1. Limitations On Amounts Received and High Transfer Fees Hamper Affordability and Access.

Limitations on the amount received on the sale of a mooring and high transfer fees result in less availability and higher cost to a person who is attempting to obtain a mooring. Basic economics holds that if there is a decrease in price, there is less incentive to offer it for sale, so fewer are available. If a significant portion of the sale price were to be given to the City, the seller would receive a significantly lower "net" amount. As a result, fewer moorings will be offered for sale. In addition, with fewer moorings offered for sale, the price for a boater to acquire a mooring increases. The fewer available, the higher the price.

Of course, if there were a reasonable transfer fee, such as a three or six month use fee, this would not have a major impact on mooring sales. But a higher fee will discourage sales, and therefore, fewer moorings would be available, and the asking price would increase. Using a percentage of the sale price (e.g. 5% of the sales price) would be difficult to administer and would present uncertainty in the process for a number of reasons. It is difficult to obtain accurate reporting of the sale price. Also, in cases involving a partial gift, the sale price would not be an indicator of value. In addition, when a boat is sold in combination with a mooring it is

impossible to differentiate what is being paid for the boat from what is being paid for the mooring. (The same model boat can vary in price by up to 300% based on its upkeep and condition, and on the boat's equipment). The best way to achieve transparency is to retain the current system of charging a portion of the annual fee as the transfer fee.

2. Auctions Would Hamper Affordability and Access.

Transfers which require auctions after a permittee decides to sell, even where the seller retains the proceeds of the sale, would hamper affordability and access for a number of reasons. First, an auction would make it difficult or impossible to offer a combination boat plus mooring, as often occurs with the sale of moorings. This limits access where a buyer is attempting to acquire a combination of boat and mooring. Required auctions would also make it difficult or impossible to sell a mooring using the popular "installment sale." Moorings are often sold with a small down payment, with payments over time. For example, a boater may ask if he or she could acquire permit rights for \$3,000 down and payments of a few hundred dollars each month, and this might be accepted. These sales are based, in part, on the credit worthiness and background of the buyer. Auctions would make an installment sale almost impossible. Even if some special form of auction could be devised to allow for time payments, few sellers would want to sell a mooring on an installment sale to an unknown person whose credit and background has not been investigated. It is also unlikely that the City would want to go into the loan business.

With no restrictions on transfers, people wanting moorings who have only a small down payment will have a chance to obtain a mooring. Auctions would eliminate that chance. Also, with no restrictions on transfers, it will be much easier to sell a boat and mooring combination. Auctions would eliminate that possibility. Auctions only add a level of complexity to the transfer process at the expense of reducing affordability and access to moorings.

Transferability Means Responsibility

It is a well-known fact of human behavior that the more a person has a stake in an enterprise, the more responsible the person will be. The corollary is also true. The lower the stake, the less one cares about the enterprise. Pick any human activity to see the principle at work. Pride of ownership is a well-known fact. Restrictions on transfers have resulted in lowering the value of mooring rights. If transfer rights are eliminated, there is little incentive for mooring owners (i.e. owners of the mooring equipment and the permit rights) to care about their moorings, or about how they are maintained, or about what boats end up on the moorings. Problems will result with the devaluation of mooring rights, including problems with pollution, equipment failure, safety, and crime. How safe will it be to kayak or paddle board through a future mooring field where the permittees have little or no stake in their moorings? Historically, permit holders had the right to transfer, and as a result, they maintained their boats and their moorings. They had pride of ownership. It is easy to see that transferability promotes the responsible use of the mooring fields. Surely, the public good is not served by the elimination of transferability. It is just the opposite - Transferability means Responsibility.

Transferability Means Fairness for those Who Followed the Rules

One of the effects of the prior change in policy was an immediate drop in the value of moorings. Many mooring holders paid large amounts of money to acquire moorings. At the time, they were told by City officials that this was the only way to realistically obtain a mooring. After following the rules, they have lost 50% to 75% of what they paid. This loss was not just a result of normal market forces, but was a direct result of the City reversing its long established policy which allowed the transfer of moorings. There is nothing fair about this reversal of policy at the expense of those who followed the rules, as explained by the City.

Transferability Promotes Transparency

With restrictions on transfers, permit holders may be less than candid about the transfer and use of their moorings. Restrictions take many forms: Not allowing any transfers, not allowing rental of mooring, and charging very high transfer fees. As restrictions are removed, there is little or no incentive for people to be less than candid in the transfer of moorings. With restrictions lifted, the City can simply require both the buyer and seller to state the purchase price. The City could establish a voluntary website where permittees could list mooring that are available with and without a boat, or the Mooring Association could establish the website and retain the data. The City could take over the website anytime it wanted. The City could adopt an ordinance that any false information on the transfer statements will result in the loss of the mooring. As more data is collected, it will be easy to see artificially low values. The system is self-regulating. Buyers will not want to lose the mooring they had paid for. They will know the City has a database against which to check any artificially low price. Transferability is the best path to Transparency.

Transferability Provides Revenue to the City

If transfers are no longer allowed, the City would receive no revenue from transfers. Allowing transfers means revenue to the City. Assuming, for example, 50 transfers per year, for an average 40 foot mooring, the revenue at the new proposed annual rate of \$26 per foot, per year, and using the current transfer fee of one-half the annual fee per transfer, the city would receive \$26,000 in transfer fees (\$260,000 over a 10-year period). Therefore, not only is transferability good for the boaters, good for the public, and fair to the current permit holders, it is good for the City.

Questions and Concerns about Transferability

In addressing transferability of moorings, a number of questions have been raised by the public, sometimes from those who do not understand the history of moorings and how they work. What follows addresses some of these questions and concerns.

1. Speculation on mooring values is overstated and would not affect availability or affordability of moorings.

The concern that may be speculators who would want to acquire moorings for resale is overstated. Even if a few people would consider purchasing a mooring for resale, this would not affect the availability or affordability of moorings. The number of moorings that transfer each year is relatively low. There is no data which support the view that a significant number of mooring transfers result from permittees who have only owned a mooring for a year or less, or that such sales resulted in any profit. Even if there were such sales, it would not affect affordability or access. If a would-be speculator did acquire a mooring in order to make a "quick" sale, then the mooring would be available for immediate sale, so the mooring would not be "unavailable." On the other hand, if the would-be speculator were to hold the mooring for years, he or she would have to pay mooring fees and maintenance fees until the mooring is sold years later, thereby reducing or eliminating any profit. This concern about speculators is truly exaggerated, and any such concern would be resolved by only permitting one transfer per year (other than a transfer to a family member or to a trust).

2. Empty moorings are not a problem.

In most cases, empty moorings indicate that boaters are using their boats. They may be away for the day, for a week, or for months. Also, a reasonable number of empty moorings is good for the Harbor. In a few areas of the Harbor, moorings are very close together. This can present a problem in high winds with boats coming even closer to each other. Empty moorings provide some protection. Empty moorings also make it easier to navigate through mooring fields. Empty moorings are also used by the City to rent to boaters visiting from other Harbors.

3. Transferability does not result in windfall profits.

The idea that a person will always sell the mooring for more than he or she paid, is a myth. Whether a person makes a true profit depends on (a) what the person paid, (b) adjusting the selling price to counter the effects of inflation (CPI), (c) adjusting the selling price for any costs and fees paid if the mooring was vacant for months prior to the sale, and (d) the costs associated with selling, including advertising fees, referral or agent fees, and transfer fees to the City.

Any calculation of amounts received is further complicated when the person sells a mooring together with a boat. Older boats are hard to value. The value depends largely on how the vessel was maintained, its current condition, and the equipment on board. The same model boat built in the same year can vary in price by more than 300%. It is therefore hard, if not impossible, to calculate any profit (or loss) from the mooring portion of a sale when someone pays one price for a mooring with a boat.

An additional problem with penalizing a person who appears to receive more than what he or she paid, is the fact that a person can just as well lose money on the sale of a mooring. The complexities involved in attempting to figure out what is a "profit," in trying to take into account the time value of money, the CPI, and other factors mentioned above, is a monumental task, a task which is not easily achieved, and a task which is prone to mistake. Adding to this problem is the fact that one can lose money on the sale of a mooring. No one is suggesting that the City reimburse a person for his or her loss. In short, any effort to calculate profits for the purpose of taking them away serves no public purpose. It only hampers the availability and affordability of moorings by discouraging sales and transfers.

Many of the questions and concerns about moorings and the boaters who use the moorings have often been based on misinformation. Public policy should be based on sound information, not myths or misinformation. Establishing sound public policy is best achieved through an understanding of the history of moorings, and how to best achieve accessibility and affordability in the future.

Annual Fees Should Be Fair and Reasonable

Just as important as Transferability is to Accessibility and Affordability, so too is a *reasonable* annual fee. The two, Transferability and Annual Fees, go hand in hand. Access and affordability are affected by both transferability and by the Annual Fees charged by the City. This report only addresses transferability. In a separate report on annual fees charged by the City, it is concluded that the City is currently charging two to three times more than is fair when proper comparisons are made, and two to three times what the fee would be if the original fees were simply adjusted with the cost of living increases (CPI). This report should be read together with the companion report on fair charges for the use of moorings, and the report on the historic CPI increases, as the current excessive fees impact Accessibility and Affordability just as much as the denial of transferability.

Conclusion – Transferability means Access, Affordability, and Responsibility

The City should repeal the current ordinance which eliminates the transferability of moorings. The City should also reduce the current excessive annual fee. The fee should be reduced to an annual fair use fee of no more than \$26 per foot, as set forth in the both the Comparable Fee Report and in the CPI Historical Report.

Responsibility is a two-way street. The City should acknowledge the debt it owes to the pioneers who came forward and who risked their time, money, and personal safety to establish the moorings. This debt should be honored by acknowledging what has always been known. Transferability is fair to those who created the moorings and to those who acquired the moorings from them.

With the restoration of transfer rights, more boaters will be able to enjoy boating and the harbor. In restoring transfer rights, the City will continue enjoy a significant revenue from transfers. Restoring transfer rights is the best way to be fair to permit holders, and the best way to provide affordable access for boaters wishing to enjoy this great harbor.

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Respectfully Submitted,

Scott Karlin

L. Scott Karlin

ⁱ FOOTNOTE (I). This is an article from the Newport Harbor Yacht Club 1991 historical documents, referring in part advertisements in the 1930s encouraging individuals to establish moorings in Newport Harbor:

mense ballroom ... large boat locker room
... sail loft ... mooring and dock service
under the supervision of Leonard G. Swales
... house manager, Mr. Neal ... house chef,
John Banks.

owners, Harry J. Bauer of Pasadena (club
member) takes advantage of the oppor-
tunity offered and keeps his 102-foot, all-
steel, topmast schooner *Puritan* at his front
door.

During this era the Newport Harbor Cham-
ber of Commerce ran a variety of advertise-
ments in the same magazine, to lure yacht
owners and their wallets to Newport Beach
with such attractions as:

- Pay no rent to the city for mooring space if
you maintain a private mooring.
- You can keep your boat at your front door
if you own a home at Newport Harbor.
- Year-round climate. Warmer ocean water.
Every modern comfort and convenience.
An hour from Los Angeles.
- Like numerous other Balboa home

The Log of the Newport Harbor Yacht Club

There is no record of a club yearbook, roster,
or other official publication from 1929 through
1937. The last existing issue of the club's *Motor
and Sail* yearbook was published in late 1923.
After that, there appear to have been no club
publications until a new yearbook was pub-
lished in 1937. The annual Commodore's
Scrapbook and short-lived "Main Brace"
newsletter were launched in 1950, and *Hand On
The Wind* was first published in February 1953.

Pacific Coast Yachting magazine ran a monthly

THE DEPRESSION YEARS: 1929-1941 61

refers to April 1935 issue of *Pacific Skipper* magazine

From *The Newport Harbor Yacht Club*, © 1991 Newport Harbor Yacht Club, Allan Trane, Steve Barnard editors

ⁱⁱ FOOTNOTE (II). The federal government owns the airwaves and holds these lands, in effect, in a public trust. In the case of airwaves, they FCC was created by President Roosevelt in the 1930s, and only requires the permit holders (e.g. CBS, ABC, NBC) to give back to the community, with public

content (e.g. news, election coverage etc). In the case of Oil and Gas, the permittee is required to give about 12.5% of the selling price of the oil and gas to the government. The system of permits has a long history and only requires some "give back" by the permit holder.

Regarding permits for Television airwaves: See
<http://chnm.gmu.edu/exploring/20thcentury/regulatingtelevision/>

The FCC was established by Franklin Roosevelt with the assumption that the airwaves, the broadcast "bandwidth," belonged to the people, much in the same way as, for example, federal forest land belongs to the people. Broadcasters applied for a license to use a section of that public property, a specific frequency. In return, broadcasters had: *an obligation to serve the interest of the community. This obligation requires the licensee to 'ascertain the needs of the community' and then provide program service to foster public understanding of those issues. How the licensee provides programming to serve the needs [was] left to the licensee's discretion.*

Regarding oil and gas permits, see http://ewg.org/oil_and_gas/part2.php

Since 1982, the federal government has leased or offered for oil and gas drilling 229 million acres of public and private land in 12 western states. Lessees pay a royalty of 12.5 percent to the Department of the Interior's Minerals Management Service on the amount or value of the oil or gas removed or sold from each lease.

Some references used in the above article

Bureau of Land Management (BLM LR2000). 2004. Correspondence from BLM to Environmental Working Group, July 19, 2004.

Bureau of Land Management (BLM Leasing Instructions). 2004. General Oil and Gas Leasing Instructions. Accessed online May 17, 2004 at http://www.ut.blm.gov:80/MineralsAdjudication/general_info.html

Bureau of Land Management Rawlins Field Office (BLM Rawlins Exceptions). 2003-2004. Wildlife, Greater Sage-grouse & Raptor Winter Range Exceptions to Date, October 1, 2003 to September 30, 2004. The report was last updated June 18, 2004.

Bureau of Land Management Pinedale Field Office (BLM Pinedale Wildlife Exceptions). 2003. Wildlife Winter Range Exceptions 2002-2003. The report was last updated December 26, 2002.

Bureau of Land Management Pinedale Field Office (BLM Pinedale Raptor Exceptions 2003). 2003. Raptor Winter and Nesting Exceptions 2002-2003. The report was last updated August 1, 2003.